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SEVENTH REPORT OF THE EXECUTIVE SECRETARY PURSUANT TO ARTICLE 41 OF THE PROVISIONAL RULES FOR CLAIMS PROCEDURE: CORRECTIONS TO APPROVED CLAIM AWARDS

1. The present report identifies, pursuant to article 41 of the Provisional Rules For Claims Procedure (S/AC.26/1992/10) (the "Rules"), corrections to approved claim awards in category "A".

2. As noted in previous reports of the Executive Secretary, corrections have typically been reported by the Commissioner panels in their reports and recommendations to the Governing Council. However, the category "A" Panel has concluded its work and no longer sits. Therefore, corrections to approved claim awards in category "A" are reported by the Executive Secretary to the Governing Council instead.

I. CORRECTIONS TO APPROVED CLAIM AWARDS

3. Recommendations for corrections to category "A" claims include corrections as a result of applying the high "A" matching programme to the second and third instalments of category "A" claims and of duplicate claims reported by Governments (including the reinstatement of claims that were originally reported as duplicates but as a result of information received from Governments have been shown to be claims submitted by different individuals).

A. Matching of high category "A" claims against claims in categories "B", "C" and "D"

4. Decision 21 (S/AC.26/Dec.21 (1994)) of the Governing Council states that "any claimant who has selected a higher amount under category 'A' (US$4,000 or US$8,000) and has also filed a category 'B', 'C' or 'D' claim

will be deemed to have selected the corresponding lower amount under category 'A'". The Commission applied the high "A" matching programme for the second and third instalments of category "A" claims against all claims data in categories "B", "C" and "D" in order to determine those claims that were filed for higher amounts in category "A" and that also have claims in those other categories.

5. Claimants with claims that were filed for the higher amount in category "A" that have been found to have filed claims in other categories have had their claim amounts adjusted downward in accordance with decision 21. A total of 3,355 claims from 25 Governments and 4 international organizations were detected by the high "A" matching programme. The adjusted claim awards have been included in the corrected total recommended awards in chapter I, section D, infra. The results of the high "A" matching programme for the remaining instalments of category "A" claims will be reported to the Governing Council at its thirty-fourth session, to be held from 7 to 9 December 1999.

B. Duplicate claims

6. Since the last article 41 report, a total of 26 claims have been found to be duplicates of other claims also awarded compensation in category "A". No compensation should be awarded for the duplicate claims and the total recommended awards should be revised accordingly. The following table identifies the Governments concerned, the instalments to be adjusted, the total number of claims to be corrected and the total amount by which the instalment will be reduced.

Table 1. Duplicate claims

Government	Instalment	Total number of duplicate claims	Amount of reduction (US$)
India	First	1	(5,000.00)
	Second	1	(4,000.00)
	Fourth	6	(24,500.00)
	Fifth	6	(24,000.00)
Pakistan	Special	1	(4,000.00)
Philippines	Third	1	(4,000.00)
Turkey	Fourth	1	(4,000.00)
	Fifth	7	(22,000.00)
	Sixth	2	(12,000.00)
Total		26	(103,500.00)

7. The adjusted claim awards have been included in the corrected total recommended awards in chapter I, section D, infra.

C. Other corrections

8. In the sixth instalment report on category "A" claims, two claims submitted by Vietnam and one claim submitted by Yemen were identified as duplicates of other claims awarded compensation in the same instalment. However, additional information submitted by the Governments of Vietnam and Yemen has now shown that the claims were in fact submitted by different individuals and that no duplication exists in these situations. The total recommended awards for Vietnam and Yemen in the sixth instalment should be revised accordingly.

9. In the sixth article 41 report, one claim that had been submitted in the fourth instalment by Turkey was identified as a duplicate of a claim awarded compensation in the fifth instalment. Additional information submitted by the Government of Turkey has now shown that the claims were in fact submitted by different individuals and that no duplication exists in this situation. The total recommended award for Turkey in the fourth instalment should be revised accordingly.

10. At the request of the Government of Canada and with the agreement of the United Nations Development Programme (UNDP) in Yemen, one claim submitted by UNDP Yemen and approved in the sixth instalment has been transferred to Canada.

D. Corrected amounts by instalment

11. Based on the above corrections, the category "A" claims aggregate corrected amounts per country, by claim instalment, are as follows:

Table 2. First instalment corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
India	25,048,000.00	25,043,000.00

Table 3. Second instalment corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
India	50,859,500.00	50,855,500.00

Table 4. Third instalment corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Egypt	174,390,500.00	174,194,000.00
India	a/ 17,001,000.00	16,732,500.00
Iran	68,574,500.00	68,447,000.00
Jordan	93,844,500.00	91,939,500.00
Kuwait	104,632,000.00	104,620,000.00
Pakistan	180,500.00	174,500.00
Phillippines	5,519,500.00	5,487,000.00
Sri Lanka	a/ 52,421,000.00	52,421,000.00
Sudan	b/ 11,947,000.00	b/ 11,945,500.00
Thailand	b/ 3,523,500.00	b/ 3,520,500.00

a/ In the sixth article 41 report the corrected total recommended awards for the third instalment for India and Sri Lanka were reported as US$16,993,000.00 and US$52,409,000.00 respectively. These amounts did not include amounts for claims that had previously been set aside pending receipt of additional information for payment purposes. In this report, the previous total recommended award fields reflect the amounts that should have appeared in the corrected total recommended award fields in the last report for these two countries.

b/ These amounts include claims from the fourth instalment that the Governing Council decided be paid as part of the third instalment.

Table 5. Fourth instalment corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Algeria	26,500.00	17,500.00
Bangladesh	52,835,500.00	52,481,500.00
Egypt	207,798,000.00	207,343,500.00
Ethiopia	192,500.00	168,500.00
Hungary	114,000.00	111,000.00
India	148,425,500.00	146,328,000.00
Iran	3,593,000.00	3,515,000.00
Ireland	129,500.00	126,500.00
Italy	184,000.00	182,500.00
Jordan	17,837,500.00	17,441,500.00
Kuwait	40,990,500.00	40,986,000.00
Netherlands	37,000.00	34,000.00
Pakistan	22,851,500.00	22,616,000.00
Philippines	30,558,000.00	30,465,000.00

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Poland	3,788,500.00	3,785,500.00
Republic of Korea	1,208,500.00	1,205,500.00
Slovakia a/	260,500.00	257,500.00
Somalia	515,500.00	511,000.00
Sri Lanka	71,729,500.00	71,728,000.00
Sudan	b/ 10,243,000.00	b/ 10,223,500.00
Syria	26,612,500.00	26,176,000.00
Thailand	b/ 2,597,500.00	b/ 2,590,000.00
Tunisia	317,500.00	314,500.00
Turkey	6,297,000.00	6,288,000.00
Yemen	25,645,000.00	25,540,000.00
UNDP Jerusalem	78,000.00	75,000.00
UNHCR Canada	56,000.00	53,000.00
UNHCR Geneva	30,500.00	27,500.00
UNRWA Gaza	690,000.00	687,000.00

a/ Claims listed under Slovakia were initially filed by the Czech and Slovak Federal Republic. Pursuant to an agreement between the Governments of the Slovak Republic and Czech Republic, awards of compensation have to be paid to these two governments respectively. The amounts identified in this table for Slovakia represent the Slovak Republic's portion of the recommended awards for the fourth instlament.

b/ These amounts exclude those claims that the Governing Council decided be paid as part of the first, second and third instalments.

Table 6. Fifth instalment corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
India	150,137,000.00	150,113,000.00
Turkey	6,514,000.00	6,492,000.00

Table 7. Sixth instalment corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Canada	a/ 59,000.00	67,000.00
Turkey	1,566,000.00	1,554,000.00
Vietnam	3,484,000.00	3,492,000.00
Yemen	1,855,500.00	1,859,500.00
UNDP Yemen	a/ 807,000.00	799,000.00

a/ In the sixth article 41 report the corrected total award for Canada was reported as US$67,000. That amount inadvertently included the claim transferred from UNDP Yemen to Canada (see paragraph 10, supra). The transferred claim is included in this seventh article 41 report and the corrected total recommended awards for Canada and UNDP Yemen have been adjusted accordingly.

Table 8. Special instalment corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Pakistan	2,558,500.00	2,554,500.00

12. Based on the above corrections, the revised total recommended awards by instalment are as follows:

Table 9. Revised total recommended awards

Instalment	Previous total recommended award (US$) b/	Corrected total recommended award (US$)
First	189,638,000.00	189,633,000.00
Second	641,356,500.00	641,352,500.00
Third	a/ 534,123,500.00	531,571,000.00
Fourth	739,203,000.00	734,839,000.00
Fifth	789,889,000.00	789,843,000.00
Sixth	320,542,000.00	320,542,000.00
Special	2,558,500.00	2,554,500.00

a/ This amount includes those claims identified in note a/ in table 4, supra, that had not been included in the sixth article 41 report.

b/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 22, 28, 29, 31, 33, 38 and 67 (S/AC.26/Dec.22 (1994), S/AC.26/Dec.28 (1995), S/AC.26/Dec.29 (1995), S/AC.26/Dec.31 (1995), S/AC.26/Dec.33 (1995), S/AC.26/Dec.38 (1996) and S/AC.26/Dec.67 (1999)) and subsequent corrections approved by the Governing Council in its decisions 42, 44, 51, 54, 57 and 71 (S/AC.26/Dec.42 (1997), S/AC.26/Dec.44 (1997), S/AC.26/Dec.51 (1998), S/AC.26/Dec.54 (1998), S/AC.26/Dec.57 (1998) and S/AC.26/Dec.71 (1999).

ADJUSTMENTS TO APPROVED CLAIM AWARDS AS A RESULT OF REVISED MATHEMATICAL CALCULATIONS

A. Deductions of category "A", "B" and "C" awards

1. In its reports on the first, second and third instalments of category "D" claims, the Panel put forward recommendations that expressly did not take into account any compensation that the claimants concerned might have been awarded in categories "A", "B" or "C". The reason was that, at that time, the processing of the category "C" claims had not yet been completed and the enhanced cross-category matching programme that allows the Commission to check claims data across several categories had not yet been implemented. In its reports, the Panel recommended that prior to the payment of awards in category "D", deductions be made from the "D" awards for losses also compensated in other claims categories. The Panel has been informed by the secretariat that with all of the "C" claims processed and the enhanced cross-category matching programme implemented, the required reductions can now be made.

2. The deductions applied to the category "D" claims include the following: deductions for compensation awarded in categories "A" and "C" for departure losses; deductions for compensation awarded in category "C" for mental pain and anguish; deductions for compensation awarded in categories "B" and/or "C" for medical expenses and loss of income due to personal injury; deductions for compensation awarded in categories "B" and/or "C" for expenses or loss of support due to the death of a spouse, child or parent; and deductions for compensation awarded in category "C" for loss of income, unpaid salaries or support.

3. Recommended awards in respect of category "D" claims in future instalments will be reported net of deductions of relevant "A", "B" and "C" awards.

B. Other adjustments

4. In the course of applying the above-noted deductions, certain other computational inaccuracies were detected that resulted in adjustments to claim awards. These include inaccurate mathematical computations of compensation for mental pain and anguish, loss of income and loss of support. Adjustments have also been made to claim awards where end of service indemnities had previously been deducted (see paragraph 28 of the report and recommendations made by the panel of Commissioners concerning the third instalment of individual claims for damages above US$100,000 (category "D" claims) S/AC.26/1999/9). Some of the adjustments relate to category "D" claim awards from which awards in other categories had to be deducted, and some of them relate to category "D" claims not subject to deductions.

C. Adjusted amounts, as per section B (other adjustments), above by instalment

Table 1. First instalment (part one)

Country or international organization	Previous total recommended award (US$)	Adjusted total recommended award (US$)
Kuwait	1,252,509.00	1,257,509.00

Table 2. Second instalment (part one)

Country or international organization	Previous total recommended award (US$)	Adjusted total recommended award (US$)
Australia	19,409.00	66,557.00
India	524,074.00	552,799.00
Jordan	1,847,662.00	2,096,507.00
Kuwait	2,915,801.00	2,959,411.00
Sudan	1,116,213.00	1,164,585.00
United Kingdom	1,604,892.00	1,646,730.00
United States	1,761,189.00	1,795,645.00

Table 3. Third instalment

Country or International Organization	Previous Total Recommended Award (US$)	Adjusted Total Recommended Award
Italy	51,712.79	58,663.00
Kuwait	5,664,171.70	5,679,172.00
United States	2,161,993.73	2,155,022.00

D. Adjusted amounts, as per section A above, by instalment after category "A", "B" and "C" deductions

5. Based on the deductions (including those applied after the adjustments identified in section C, supra), the aggregate adjusted amounts per country, by claim instalment, are as follows:

Table 4. First instalment (part one) adjustments after deductions

Country or international organization	Previous total recommended award (US$)	Adjusted total recommended award (US$)
Australia	105,307.00	25,395.10
Canada	474,954.00	293,950.74
France	137,854.00	85,950.89
Germany	55,360.00	16,605.67
India	52,283.00	37,138.54
Israel	98,429.00	90,929.00
Italy	88,584.00	11,075.35
Jordan	407,042.00	255,477.41
Kuwait	1,257,509.00	1,059,075.26
Sudan	24,913.00	3,113.69
United Kingdom	187,560.00	51,567.58
United States	2,424,418.00	2,195,245.24

Table 5. Second instalment (part one) adjustments after deductions

Country or international organization	Previous total recommended award (US$)	Adjusted total recommended awards (US$)
Australia	66,557.00	58,557.00
Canada	51,900.00	15,567.82
Denmark	25,086.00	709.34
France	58,338.00	24,038.09
India	552,799.00	393,986.27
Israel	596,514.00	591,514.25
Italy	41,107.00	37,370.20
Jordan	2,096,507.00	1,114,643.52
Kuwait	2,959,411.00	1,728,458.48
Lebanon	122,360.00	100,051.88
Pakistan	117,799.00	48,975.77
Poland	25,494.00	10,634.14
Sudan	1,164,585.00	614,464.32
Syria	243,744.00	240,558.60

Country or international organization	Previous total recommended award (US$)	Adjusted total recommended awards (US$)
United Kingdom	1,646,730.00	956,552.04
United States	1,795,645.00	862,702.41

Table 6. Third instalment adjustments after deductions

Country or international organization	Previous total recommended award (US$)	Adjusted total recommended award (US$)
Australia	167,664.83	84,831.84
Canada	562,930.19	252,031.36
Germany	22,837.40	0.00
India	1,501,591.52	1,102,044.78
Israel	236,713.64	229,167.64
Italy	58,663.00	58,662.79
Jordan	5,145,257.40	3,506,166.42
Kuwait	5,679,172.00	2,381,113.86
Lebanon	119,148.33	75,823.08
Philippines	48,957.18	20,884.52
Sudan	377,168.50	195,899.68
United Kingdom	3,132,729.79	2,120,388.58
United States	2,155,022.00	1,373,856.43
UNRWA (Gaza)	124,166.11	89,218.02

Table 7. Revised total recommended awards after adjustments and deductions

Instalment	Previous total recommended award (US$) a/	Adjusted total recommended award (US$)
First (part one)	5,406,161.00	4,222,472.47
Second (part one)	11,182,109.00	6,909,310.13
Third	19,502,642.64	11,675,688.53

a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 47, 49, 55, 59, and 68 (S/AC.26/Dec.47 (1998), S/AC.26/Dec.49 (1998), S/AC.26/Dec.55 (1998), S/AC.26/Dec.59 (1998), S/AC.26/Dec.68 (1999)).

Geneva, 8 September 1999

(Signed) R.K.P Shankardass
Chairman

(Signed) H.M. Joko Smart
Commissioner

(Signed) M.C. Pryles
Commissioner

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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING PART ONE OF THE FOURTH INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES ABOVE US$100,000 (CATEGORY "D" CLAIMS)

GE.99-67089

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Introduction

1. This is the sixth report to the Governing Council of the United Nations Compensation Commission (the "Commission") submitted pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules"), by the "D1" Panel of Commissioners (the "Panel"), being one of two Panels appointed to review individual claims for damages above US$100,000 (category "D" claims). 1/ This report contains the determinations and recommendations of the Panel in respect of part one of the fourth instalment, comprising 850 of the 1050 category "D" claims in the fourth instalment, submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules on 26 January 1999.

2. The 850 claims contain loss types for which methodologies have already been developed ("application claims"). 2/ Part two of the fourth instalment comprises 200 claims for real property losses. As part of its review of those 200 claims, the Panel will develop the methodology for resolving the majority of real property claims in category "D". In order to allow sufficient time for the development of the methodology, and in view of the complex legal and valuation issues involved in resolving them, the Panel designated the 200 claims "unusually large or complex" pursuant to article 38(d) of the Rules and will review them within a period of twelve months.

3. The Panel began its review of the fourth instalment on 26 January 1999. In addition to regular communications, the Panel met at the Commission's headquarters in Geneva to consider the claims on the following dates: 25-26 January 1999, 22-24 March 1999, 26-27 April 1999, 24-26 May 1999 and 18-21 July 1999. Members of the Panel also visited Kuwait from 18-21 March 1999. During the visit, they met with a number of Kuwaiti Government officials and obtained information relevant for the resolution of claims in parts one and two of the fourth instalment, and for category "D" claims in general.

I. BACKGROUND

A. Background information

4. The factual background relating to Iraq's invasion and occupation of Kuwait that was taken into account by the Panel in reviewing claims in part one of the fourth instalment is set out in detail in the First and Second Reports. 3/

5. The Panel has taken into consideration additional relevant material, including information accompanying the submission of these claims provided by the Executive Secretary pursuant to article 32 of the Rules and additional information and views presented by Governments that have submitted claims, and by the Government of Iraq, in response to the reports submitted to the Governing Council by the Executive Secretary in accordance

with article 16 of the Rules. In addition, the Panel has been assisted by expert consultants in the valuation of claims for D4(personal property) losses.

B. General legal framework

6. The general legal framework for the resolution of category "D" claims is set out in chapter V of the Panel's First Report.

C. Applicable evidentiary standard

7. The issue of evidentiary standards to be applied in reviewing category "D" claims was addressed by the Panel in chapter VI of the First Report and chapter II of the Second Report. 4/ The Panel's recommendations in these two reports were approved by the Governing Council in decisions 47 and 49 respectively. 5/ As with previous instalments, the Panel has reviewed the claims in the present instalment and made its recommendations by assessing the documentary and other appropriate evidence as well as balancing the interests of claimants, who had to flee a war zone, with the interests of the Government of Iraq, which is liable only for damage caused as a direct result of its invasion and occupation of Kuwait.

II. NEW ISSUES ARISING IN APPLICATION CLAIMS

8. Some of the application claims in this instalment raise new issues that were not dealt with in any of the Panel's previous reports. These new issues and the Panel's determinations thereon are set out below.

A. Jurisdictional issues: Claims for losses that occurred outside the jurisdictional period

9. The Panel reviewed a number of claims for losses that occurred outside the jurisdictional period. One claim was for loss of personal property that a claimant asserts was lost as a result of his detention by Iraqi security forces from January to July 1990. Another claimant claimed for property that was stolen in June 1991. The Panel also considered a claim for household goods which appeared, from the evidence, to have been in the possession of the claimant as late as 1993. In all of the above circumstances, the Panel determines that the claimants have failed to prove that their personal property losses occurred as a direct result of Iraq's invasion and occupation of Kuwait and decides that the claims are not compensable.

B. D1(money) issues: Claim for expenses incurred as a result of an inability to leave Kuwait

10. The Panel has considered a claim for D1(money) losses for transportation and hotel expenses in Iraq. The claimant is a tetraplegic.

During the jurisdictional period, the Iraqi authorities seized the claimant's specially adapted hand-controlled motor vehicle from him in Kuwait. The claimant travelled to Iraq from his home in Kuwait to appeal to the authorities to return the vehicle, as he intended to use it to travel to a neighbouring country. Despite repeated requests, the authorities refused to release the vehicle to the claimant. The Panel finds that the claimant has shown a direct causal link between the expenses incurred in attempting to secure the release of his vehicle and the invasion and occupation of Kuwait, and that the claim is compensable. The claimant also submitted a claim for mental pain and anguish as a result of being forced to hide. The Panel determines that the circumstances show that he was not forced to hide, but that he was illegally detained by Iraqi authorities. The Panel has therefore treated the claim as one for illegal detention and recommends compensation accordingly.

C. D4(personal property)("D4(PP)") issues: Ownership, loss and causal relationship test ("OLC Test")

11. In some claims, claimants failed to submit any documentation in support of personal property losses, and have not responded to requests for additional information pursuant to article 34 of the Rules. Some claimants failed to prove their presence or residence in Iraq or Kuwait before or at the time of the invasion. In one case, the claimant was resident in Bahrain at the time of the invasion, while another claimant was studying in the United States of America and has failed to prove that he had a home in Kuwait. The Panel determines that no compensation should be awarded for any of those claims.

D. Claims for items not covered by the D4(PP) compensation methodology

12. As part of its review of the D4(PP) claims in part one of the fourth instalment, the Panel has reviewed claims for the following items not covered by the compensation methodology developed in part two of the second instalment. 6/

1. Boats

13. The Panel has reviewed claims for loss or damage to boats and determines that where a claim is for the total loss of a boat, compensation will be calculated based on the 1990 value. Depreciation will be calculated on the basis of the age of the boat at the time of loss and the nature of its use. The Panel decides that it will not recommend compensation for repair costs which exceed the value of the boat as at 1 August 1990.

2. Valuation of poultry, agricultural produce and trees

14. In part two of the second instalment, the Panel developed valuation tables for livestock, bloodstock and gold. Part one of the fourth instalment includes claims for poultry, agricultural produce and trees

which were not covered by the developed methodology. With the assistance of its expert consultants, the Panel has developed tables to be applied in the valuation of these items.

3. Claims for intellectual property

15. The Panel has reviewed a number of claims for intellectual property losses in part one of the fourth instalment. 7/ The Panel determines that there is a presumption of ownership in favour of the author of the work. The Panel further determines that in order to resolve any ownership issues that might arise in cases where claimants indicate that they were working under the auspices of a grant, it would be necessary to examine the terms of the grant to ascertain ownership.

E. D4(motor vehicle)("D4(MV)") issue: Valuation of motor vehicles for which no values are indicated on the motor vehicle valuation (MVV) table

16. The Panel found that there were a number of claims for motor vehicles which could not be valued using the Motor Vehicle Valuation Table. 8/ The secretariat assisted the Panel in arriving at 1990 market values for these claims by depreciating the claimed values. The applicable depreciation rates have been established in each case by taking into account the cost price and the year of purchase and/or the year of manufacture of the motor vehicle.

III. PANEL DETERMINATIONS ON OTHER CLAIMS IN PART ONE OF THE FOURTH INSTALMENT

17. The Panel has been conscious of the fact that in part one of the fourth instalment it has undertaken the consideration of the largest number of claims referred to it so far, and that all these claims have been designated application claims. At each of its meetings in Geneva, the Panel has therefore extensively reviewed individual claims, examined the application of the methodologies developed by the Panel and satisfied itself that the appropriate methodologies have been applied to the claims in the instalment. In the course of such examination, wherever claims gave rise to new issues not considered in previous instalments, the Panel ensured that these were resolved so as to be consistent with the methodologies established by the Panel.

18. The Panel defers its recommendations on a small number of claims because they contain loss types that cannot be resolved in part one of the fourth instalment. 9/

19. A number of claimants filed claims in category "D" specifically for interest on the value of their category "C" or "D" claims. In the First Report, the Panel determined that interest would be paid in accordance with Governing Council decision 16. 10/ The Panel notes that this is consistent with the recommendation of the Category "C" Panel of Commissioners in its

first report. 11/ Interest will be paid on all successful claims in both categories "C" and "D" as a matter of course at a later date.

20. The Panel has also considered a number of claims for preparation costs, including legal and loss adjusting fees. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary that the Governing Council intends to resolve the issue of claims preparation costs at a future date. Accordingly, the Panel takes no action with respect to the claims for such costs.

IV. CROSS CATEGORY ISSUES

Deductions of category "A", "B" and "C" awards

21. Pursuant to Governing Council decision 8, 12/ which caps awards for claims for mental pain and anguish, and recommendations by the Panel concerning awards approved in respect of related claims in categories "A", "B" and/or "C", 13/ the Panel recalls that in its First, Third, and Fifth reports, 14/ it reported all category "D" awards without deductions of awards in related claims in categories "A", "B" and "C" having been made, as not all category "C" claims had been resolved. Following the approval by the Governing Council of the last report of the Category "C" Panel of Commissioners, 15/ deductions of approved awards in respect of related claims in categories "A", "B" and/or "C" can now be effected. Recommended awards in respect of claims in part one of the fourth instalment and in future instalments will be reported net of deductions of "A", "B" and "C" approved awards.

V. RECOMMENDATIONS

A. Awards by submitting entity

22. The annex hereto lists the awards recommended by the Panel for each Government and international organization that has claimants included in part one of the fourth instalment. Each Government and international organization will be provided with a confidential list containing the individual recommendations made in respect of its claimants. As will be seen from the annex, against the total amount claimed of US$198,200,791.63, the Panel has recommended compensation totalling US$76,434,676.74.

B. Interest and exchange rates

23. The Panel recommends that interest be awarded pursuant to its determinations as set out in paragraphs 64-65 of the First Report.

24. For purposes of calculating recommended amounts, the Panel has converted currencies other than United States dollars into United States dollars in accordance with the rates set out in paragraphs 61-63 of the First Report.

25. In paragraph 39 of its Fifth Report, the Panel noted that where losses are claimed for money in currencies other than United States dollars and it is established from the evidence in the claim file that the application of the exchange rate approved by the Panel mentioned above would result in either under-compensation or over-compensation of the claimant, the Panel determined that it will select a conversion rate based on the evidence that most closely compensates the claimant for the value of the loss suffered. In particular, this would be applied in situations where the claimant has submitted evidence that he or she purchased the money at a rate different than the rate approved by the Panel.

C. Submission through the Executive Secretary to the Governing Council

26. The Panel respectfully submits this report through the Executive Secretary to the Governing Council, pursuant to article 38(e) of the Rules.

Geneva, 20 July 1999

(Signed) R.K.P. Shankardass
Chairman

(Signed) H.M. Joko-Smart
Commissioner

(Signed) M. C. Pryles
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ In the first instalment of category "D" claims, the Panel developed methodologies for the following loss types: D1(money); D1(mental pain and anguish ("MPA"); D3(death); D4(motor vehicles); D6(loss of income); D10(payment or relief to others); and D10(other). A full description of the methodologies is set out at paragraphs 103 to 382 of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/1) ("First Report"). The Panel developed methodologies for the following loss types in part one of the second instalment: D2(personal injury) and D5(loss of bank accounts, stocks and other securities). These methodologies are described in the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Second Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/11) ("Third Report"), at paragraphs 41-116. Further, the Panel developed the methodology for D4 (personal property) losses in part two of the second instalment. This methodology is described in the "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the Second Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/15) ("Fourth Report"), at paragraphs 30-57.

3/ See in particular chapter II of the First Report and chapter IV of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/3) ("Second Report").

4/ See also paragraph 8 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1) which provides that "[s]ince ... [D] claims may be for substantial amounts, they must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". See also articles 35(2) and (3) of the Rules.

5/ S/AC.26/Dec.47 (1998) and S/AC.26/Dec.49 (1998).

6/ See paragraphs 35-51 of the Fourth Report.

7/ Following its previous decision, as set out in paragraph 24 of the Fourth Report, the Panel considered that these claims were properly within the D4(PP) loss type.

8/ See paragraphs 251, 267-272 of the First Report for a description of the MVV Table and the D4(MV) valuation methodology.

9/ The claims contain D7 (real property) and D8/9(business loss) losses for which methodologies are yet to be developed.

10/ Paragraph 1 of decision 16 (S/AC.26/1992/16) states that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". See also paragraphs 64-65 of the First Report.

11/ See page 33 of the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims For Damages Up To US$100,000 (Category "C" Claims)" S/AC.26/1994/3.

12/ S/AC.26/1992/8.

13/ See paragraphs 84, 113, 222, 237, 211, 335 and 336 of the First Report; and paragraphs 54 and 55 of the Fourth Report.

14/ The Panel's "Report and Recommendations Made by the Panel of Commissioners Concerning The Third Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1999/9) ("Fifth Report") was approved by Governing Council decision S/AC.26/Dec.68 (1999).

15/ S/AC.29/1999/11 approved by Governing Council decision S/AC.26/Dec.70 (1999).

Annex

SUMMARY RECOMMENDATIONS OF PART ONE OF THE FOURTH INSTALMENT OF CATEGORY "D" CLAIMS

Submitting Entity	Amount claimed (US$)	Number of claims recommended	Number of claims not recommended for payment or (deferred) a/	Amount of compensation (US$)
Algeria	200,100.35	1	0	55,469.07
Australia	3,103,864.44	8	1	526,247.51
Austria	113,707.95	1	0	23,027.82
Belgium	566,826.00	1	1	700.00
Bulgaria	187,370.25	1	0	66,564.02
Canada	5,931,732.19	29	0	1,697,291.90
Denmark	426,544.25	3	0	73,219.55
Egypt	4,392,052.15	3	1	112,661.39
France	6,044,488.92	17	3 (1)	769,356.83
Germany	4,457,572.13	17	1	1,505,235.48
Greece	924,695.81	3	0	176,975.56
Ireland	204,509.85	2	0	83,656.58
India	47,507,873.26	190	6 (4)	9,104,304.40
Israel	3,901,543.76	2	0	201,163.50
Italy	2,327,524.45	9	1 (1)	530,580.59
Japan	1,000,325.00	3	0	379,936.20
Jordan	15,035,531.70	48	13 (7)	1,857,575.62
Kuwait	57,342,437.05	229	2 b/ (5)	42,068,963.28
Lebanon	4,744,460.39	17	0 (3)	2,168,800.48
Pakistan	2,418,992.14	15	1 (13)	875,447.63
Philippines	911,339.72	6	0	438,956.23
Poland	220,052.19	2	0	89,313.17
Singapore	123,512.28	1	0	56,668.79
Spain	111,470.00	1	0	6,228.00
Sudan	1,491,495.30	5	1 (1)	422,484.85
Sweden	1,552,328.47	8	0	895,837.98

Submitting Entity	Amount claimed (US$)	Number of claims recommended	Number of claims not recommended for payment or (deferred) a/	Amount of compensation (US$)
Syria	1,308,846.01	7	0 (3)	587,627.92
Turkey	812,186.00	3	0	310,077.71
United Kingdom	16,738,876.53	78	5 (3)	6,455,839.41
United States of America	11,707,465.62	48	2 (3)	4,153,619.24
Yemen	394,885.81	1	0	110,048.24
UNDP Algeria	171,451.05	1	0	72,818.29
UNDP Kuwait	411,113.49	1	0	48,267.45
UNDP UAE	142,083.00	1	0	35,515.00
UNDP Washington	413,089.32	3	1	127,607.52
UNRWA Gaza	858,444.80	2	0	335,334.39
Total	198,200,791.63	767	39 (44)	76,423,421.60

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a/ Numbers in parentheses represent claims that have been deferred for reasons set out in paragraph 18 of the report.

b/ Includes one withdrawn claim.